

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

CONRAD LITTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001740

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
2009-GS-18-00575

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
VS.)
CONRAD LITTLE,)
DEFENDANT.)

TRANSCRIPT OF RECORD

JUNE 15, 2010
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

MANDY KIMMONS, ESQ.
ATTORNEY FOR THE STATE

STEVE DAVIS, ESQ.
ATTORNEY FOR THE DEFENDANT

AGENT BRANDY JAMES,
PROBATION DEPARTMENT

Cheryl McLean
CLERK OF COURT
DORCHESTER COUNTY

2014 JAN -9 AM 11:30

CERTIFIED COPY

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
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- NO EXHIBITS ENTERED -

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1 THE COURT: Okay. All right. You are Conrad K.
2 Little?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: (To Court Clerk) Shawn, if you'd please
5 swear in Mr. Little.

6 COURT CLERK: Raise your right hand.

7 THE DEFENDANT: (Complies.)

8 COURT CLERK: State your full name for the record.

9 THE DEFENDANT: Conrad Keith Little.

10 WHEREUPON CONRAD KEITH LITTLE,
11 having been first duly sworn, testifies as follows:

12 THE COURT: All right. Mr. Little, you are
13 represented by Mr. Steve Davis?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Now, Mr. Davis, have you
16 advised your client regarding the nature of this offense,
17 the maximum possible penalty, and his constitutional
18 rights, including his right to a jury trial?

19 MR. DAVIS: We have, Your Honor. In fact, we were in
20 the process of exercising some of those constitutional
21 rights.

22 THE COURT: Yes, sir. And in your opinion, does he --
23 he understands his rights?

24 MR. DAVIS: He does, Your Honor.

25 THE COURT: The nature of this offense?

1 MR. DAVIS: He does, Your Honor.

2 THE COURT: And the maximum possible penalty?

3 MR. DAVIS: Yes, correct.

4 THE COURT: All right. Tell me how he wishes to
5 plead.

6 MR. DAVIS: He tells me, with my advice and consent,
7 to plead guilty, Your Honor.

8 THE COURT: All right. And you concur with his
9 decision.

10 MR. DAVIS: I concur with it, Your Honor.

11 THE COURT: All right. And from your investigation of
12 the facts and circumstance of your client's case, do you
13 believe that the State could produce sufficient evidence to
14 convict and establish your client's guilt beyond a
15 reasonable doubt; and if he was to stand trial, that his
16 conviction would be probable?

17 MR. DAVIS: It would be probable, Your Honor. This is
18 a bust/buy situation, where drug transaction's taking place
19 and the individual is busted right on the scene, putting
20 the funds in their hands and the drugs. So, yes.

21 THE COURT: All right.

22 MR. DAVIS: More -- more than probable, Your Honor.

23 THE COURT: Very well. Do you have any questions or
24 concerns regarding Mr. Little's competency?

25 MR. DAVIS: No. Mr. Little's been able to communicate

1 with me. That's never been an issue for him. He's
2 intelligent and understands the parameters of my discussion
3 -- to fully understand what I've shared with him, Your
4 Honor, and what I've advised him.

5 THE COURT: Yes. Yeah. And I know that Mr. Little is
6 not well. And if he needs to sit, he's perfectly,
7 perfectly welcome to sit if he would prefer.

8 THE COURT: Mr. Little, I have many questions to ask
9 of you. If you -- number one, if you do not understand my
10 question, please do not answer my question. But do let me
11 know that you don't understand my question. And if you
12 need to take a break to speak with Mr. Davis, I want you to
13 feel free to do that. All right?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right.

16 DIRECT EXAMINATION BY THE COURT:

17 Q Tell me how old you are.

18 A Fifty-seven years old.

19 Q All right. Tell me how old you are, Mr. Little,
20 again. I'm so sorry.

21 A I'm sorry, also, ma'am. I'm 57 years old.

22 Q Okay. Thank you, Mr. Little. And how far did you go
23 in school?

24 A I dropped out in the 10th grade, went back and go two
25 years of college.

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE

7

- 1 Q And how long have you been locked up?
- 2 A Now?
- 3 Q Yes.
- 4 A Over 30 days, a little over 30 days.
- 5 Q Okay. And where do you work?
- 6 A I'm disabled.
- 7 Q All right. Are you receiving disability?
- 8 A Yes, ma'am.
- 9 Q All right. How long have you been receiving -- you're
- 10 in kidney failure, obviously, because you're on dialysis;
- 11 am I correct?
- 12 A Yes, ma'am. End-stage renal disease, is what it's
- 13 called.
- 14 Q I understand. And before -- before you came to the
- 15 point where you were disabled --
- 16 A Yes, ma'am.
- 17 Q -- were did you work?
- 18 A I worked for about -- approximately a year at
- 19 Protective Vehicles, Incorporated, on the old Naval base.
- 20 Q Yes. And ---
- 21 A Old armored cars.
- 22 Q About how long ago has that been?
- 23 A Two years ago.
- 24 Q About two years ago. Okay. All right.
- 25 And where did you work before that?

- 1 A I was trying to establish a self-employed business.
- 2 Q Okay. And what kind?
- 3 A Home improvement and painting.
- 4 Q Uh-huh. Uh-huh. In the construction industry.
- 5 A Yes, ma'am.
- 6 Q I understand. Have you ever been treated for alcohol
- 7 or drug abuse, or any mental health issue?
- 8 A No, ma'am. I never -- well, I did go through a drug -
- 9 - drug addiction program.
- 10 Q And how long ago was that?
- 11 A Back in Virginia, I did that in -- just before I came
- 12 here, and I think I've been here, like, seven years.
- 13 Q Okay. So, a number of years ago.
- 14 A Yes, ma'am.
- 15 Q Did you finish the program?
- 16 A Yes, ma'am.
- 17 Q Okay. All right. And that was for alcohol or drugs?
- 18 A Drugs.
- 19 Q Drugs. Okay. Any other treatment other than that for
- 20 alcohol, drugs, or any mental health issue, depression,
- 21 things like that?
- 22 A No, ma'am.
- 23 Q Okay. And in the last 72 hours, have you had any
- 24 medicine?
- 25 A Yes, ma'am.

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE

9

1 Q I figured --

2 A A lot of it.

3 Q I figured you'd had some medicine. What kind of
4 medicine?

5 A Well, I take five high blood pressure pills. I take a
6 binder -- with any food that I eat I take a binder with any
7 type of food I eat. And ---

8 Q Is that so you don't have reflux or indigestion or
9 whatever or for high blood?

10 A Yes, ma'am. I also take a pill for that also, but
11 then I -- in addition to that, if I eat anything, I have to
12 take another type of binder. So, I take that -- I take 7 -
13 - 9 pills every morning and 3 -- 5 pills every evening.

14 Q Okay. And that's because of our renal disease.

15 A Yes, ma'am.

16 Q And you've got high blood pressure.

17 A Yes, ma'am.

18 Q Okay. And you know, I don't mean to be unkind, but a
19 57-year-old gentleman in America, they're probably taking
20 something for cholesterol.

21 A You know, if -- my doctor -- he -- I had another
22 doctor prior to the doctor I have now.

23 Q Right. Right.

24 A And he was the junior partner of the old -- my former
25 doctor.

1 Q Yes.

2 A And he retired. And he had me on Lipitor at one time.

3 Q Okay.

4 A But this doctor doesn't have me on ---

5 Q Doesn't think you need that.

6 A I don't know. I guess I'm ---

7 Q Well, maybe some of that other ---

8 A --- doing a little bit of improvement.

9 Q --- stuff's got ---

10 A I don't know.

11 Q Good. Good.

12 A Because that's one pill I don't ---

13 Q That's one -- you missed that one. You bypassed that
14 one. Got the rest of them.

15 Are you also a diabetic?

16 A Fortunately, no.

17 Q Okay. Well, that's good. So, your medicine, your
18 medicine is all associated with -- with your renal disease
19 and high blood pressure.

20 A Yes, ma'am. I have a bad kidney, basically.

21 Q Yes. Yes. Okay. Are you taking anything for
22 depression?

23 A No.

24 Q Everything is associated with physical conditions.

25 A High blood pressure and --

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE, 11

1 Q All right. Okay. Now, is there anything about your
2 condition as it is -- obviously, if you were not receiving
3 dialysis on a regular basis, that would interface with your
4 ability to know what you're doing here today, because you
5 probably -- unfortunately, you'd probably be very, very
6 sick.

7 But is there anything about your condition as it
8 exists today or any of your medicine that you're taking
9 that could keep you from knowing what you're doing here
10 today?

11 A I don't think so. No.

12 Q Okay. If you get lightheaded or anything at all
13 should change and you get concerned about your ability to
14 know exactly what you're doing here today, will you let me
15 know?

16 A Yes, ma'am.

17 Q Because this is not a forced march. Okay?

18 A I understand.

19 Q All right. Good. Very -- very well.

20 A Thank you. I -- I it.

21 Q Now, setting those issues aside, the high blood
22 pressure and the renal disease --

23 A That's right.

24 Q -- is there anything else, are there any other
25 physical or mental or emotional or drug or alcohol or any -

1 - nervous or anything else -- conditions that you have,
2 challenges that you have -- that could keep you from
3 knowing what you're doing here today?

4 A No.

5 Q Okay. That was -- I know that was a long question,
6 but it's -- it's sort of meant to be kind of all
7 encompassing, you know?

8 A I understand.

9 Q Yeah. All right. And -- very well. Now, let's talk
10 about -- let's talk about your charges, okay?

11 A Yes, ma'am.

12 Q And distribution of cocaine, second offense, second
13 offense, carries a maximum possible penalty of 30 years in
14 prison. Do you understand that?

15 A Yes, ma'am.

16 Q And up to a \$50,000 fine.

17 A Yes, ma'am.

18 Q Okay. Now, this is a drug offense, right?

19 A Yes, ma'am.

20 Q And you know that.

21 A Yes, ma'am.

22 Q One of the -- one of the consequences of -- of a plea
23 to distribution of cocaine, second offense, is that it is a
24 strike. It is a serious offense.

25 I want -- I -- I'm double -- let me tell you what I'm

1 doing. I'm actually double checking this, too, with the
2 new -- the new stuff. I want the -- you've already done
3 that. Okay. You've got it.

4 So, 5 to 30 years in prison, and a fine of up to
5 \$50,000. You understand that that's the penalty.

6 A Yes, ma'am.

7 Q Okay. Very well. Now, also --

8 MR. DAVIS: Judge, I ask -- if I may cut you off.

9 THE COURT: Sure. Go ahead.

10 MR. DAVIS: Could you -- what would the penalty be for
11 a third offense?

12 THE COURT: What you think? You're shopping?

13 MR. DAVIS: Yeah. I just want the client to
14 understand the -- the difference.

15 THE COURT: I understand.

16 MR. DAVIS: The enhancement aspect.

17 THE COURT: I'll read it.

18 MR. DAVIS: Thank you.

19 THE COURT: Shall I read it?

20 MR. DAVIS: Thank you, Judge.

21 THE COURT: Is that okay?

22 MR. DAVIS: Yes, please.

23 THE COURT: It says (as read): "For a third or
24 subsequent offense, a mandatory minimum term of
25 imprisonment of not less than 25 years nor more than 30

1 years, no part of which may be suspended nor probation
2 granted; and a fine -- and -- and a fine of \$50,000."

3 MS. KIMMONS: Your Honor, that's trafficking.

4 THE COURT: I don't know. Hold on.

5 MR. DAVIS: Distribution should be a mandatory of 15,
6 Your Honor.

7 THE COURT: Hold on. Oh, yeah. It is trafficking.
8 Forget what I just said.

9 MR. DAVIS: Give me a heart attack there.

10 THE COURT: No, I don't want to give -- nobody wants a
11 heart attack. Not a problem. Let's back up a little bit.
12 Let's take us another little look.

13 (Brief pause.)

14 THE COURT: Y'all come here a minute. Let -- I won't
15 make y'all speak. Y'all come over here and let's do this
16 together.

17 (Bench conference between the Court, Defense and State
18 counsel, and Solicitor Harrison Bell.)

19 THE COURT: Let's do this. Let -- I'm feeling --
20 everybody's feeling a little bit -- let's -- let's go get
21 something to eat, let's let Bonnie get something to eat.
22 And then we -- let's come on back here at about -- let's
23 say around 2:30-ish.

24 MR. DAVIS: Okay.

25 THE COURT: Just as long as we can finish before the

1 jury comes back, that'd be fine. That way your client can
2 get a little something to eat.

3 MR. DAVIS: Yeah.

4 THE COURT: What we're -- what we're gonna do -- just
5 so you understand why we're up here looking at all these
6 things, let me tell you -- let me tell you about that.
7 Here -- we have just had a major overhaul of our criminal
8 statutes. It just passed week before last. It just
9 passed.

10 And some of it is not to take effect until January the
11 1st. Some of it takes effect upon the signature of the
12 governor. Just happened.

13 THE DEFENDANT: Right. Right. I understand.

14 THE COURT: And I want to be certain -- to be
15 absolutely candid, I want to be certain that I -- that
16 you're getting all the benefit --

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: -- of the change of the law, none of the
19 burden. In other words, if it's increased, you go back --
20 you go back to where you were.

21 THE DEFENDANT: Right. I understand.

22 THE COURT: But if it's a -- if it's better for you,
23 I've got to be assured that you're getting that.

24 THE DEFENDANT: That -- that I'm -- right. I'm
25 eligible in receiving ---

1 THE COURT: That's right. This is not a two-way
2 street, this is a one-way street ---

3 THE DEFENDANT: One-way street. And it's for my ---

4 THE COURT: --- for you.

5 THE DEFENDANT: --- benefit.

6 THE COURT: That's right.

7 THE DEFENDANT: Yes, ma'am. I understand.

8 THE COURT: So, I've got to be absolutely certain and
9 -- and I'm confident that it is ---

10 THE DEFENDANT: I thank you for being that diligent
11 and trying to make sure ---

12 THE COURT: Well, that's what -- that's what we're
13 doing.

14 THE DEFENDANT: --- that I get -- yes, ma'am.

15 THE COURT: And we're all working to be sure we've
16 done it -- now I've moved on to whether -- I've got to
17 confirm that it's still serious. That's where I am. I'm
18 about finished, but let's everybody go get -- let's go get
19 our blood sugar elevated a little bit, and then come back.
20 And we'll be in better shape.

21 THE DEFENDANT: Okay. Thank you.

22 THE COURT: Yeah. And we'll come on back. Ain't no
23 rush.

24 THE DEFENDANT: Okay.

25 (Off the record at 1:57 p.m.)

1 (Back on the record at 2:54 p.m.)

2 THE COURT: All right. We are back on the record with
3 Mr. Little. And I think we have a response, Mr. Little.

4 THE DEFENDANT: Okay. Thank you.

5 THE COURT: And I have got to amend what I told you
6 earlier. Four -- under the new 44-53-370(a) -- excuse me --
7 - (b) rather, (1), as amended, here's what we know. Is --
8 (as read): " For a second offense, the offender must be
9 imprisoned not less than five years nor more than 30 years;
10 or fined not more than \$50,000; or both."

11 All right. We talked about that earlier. Okay.

12 Then the question was -- by Mr. Davis, I'd like him to
13 know what the third offense is under the new statutory
14 scheme.

15 (As read) "For a third or subsequent offense, or if
16 the offender previously has been convicted two or more
17 times in the aggregate of a violation of the laws of the
18 United States or any state related to narcotic drugs, etc.,
19 the offender must be imprisoned not less than 10 years, nor
20 more than 30 years; or fined not more than \$50,000; or
21 both."

22 Says -- and I -- I want to read this, too, because I
23 think this is important for you to know, too.

24 (As read) "Notwithstanding any other provision of law,
25 a person convicted and sentenced pursuant to this item for

1 a first offense or second offense" -- second offense,
2 that's you -- "may have the sentence suspended and
3 probation granted; and is eligible for parole, supervised
4 furlough, community supervision, work release, work
5 credits, and good conduct credits."

6 Okay. Now, with regards to whether or not it is a
7 serious offense, it is a serious offense. However --

8 (Brief pause as the Court looks through documents.)

9 DIRECT EXAMINATION BY THE COURT:

10 Q If I can get to, I'll go over those -- the other
11 things, but what I think what's important to know is that
12 it is -- it, because it is punishable by up to 30 years,
13 just as Mr. Bell said, it is still considered a serious
14 offense. So, are we clear with regards to that?

15 A Yes, ma'am.

16 Q Better than what I told you earlier.

17 A Yes, it was.

18 Q For third offense. But -- but with regards to the
19 second offense, I think that was consistent.

20 A Yes, ma'am.

21 Q Okay. Now, you know that this is a drug offense,
22 right?

23 A Yes, ma'am.

24 Q And because this is a drug offense, if you are
25 convicted of another drug offense in the future, as you --

1 as you, unfortunately and unhappily learned, the
2 consequences at the exposure to the greater periods of
3 prison time goes up. Yes. All right.

4 Now, are you on probation or parole at this time?

5 A Probation.

6 MR. DAVIS: He's on probation, Your Honor.

7 Q Oh. You're on probation?

8 A (No audible response.)

9 Q All right. And when -- when did you go on probation?

10 MS. KIMMONS: I believe it was in 2008, Your Honor.

11 THE COURT: 2008.

12 Q Do you know that your conviction here today will
13 violate the terms of your probation, and could cause that
14 sentence to become an active sentence?

15 A Yes, ma'am.

16 Q Okay. That's a consequence, too.

17 A Yes, ma'am.

18 Q Okay. Very well. Now, here's what you have told me:
19 That you understand the nature of this offense, it's a drug
20 offense --

21 A Yes, ma'am.

22 Q -- the maximum possible penalty of 30 years --

23 A Yes, ma'am.

24 Q -- and from 5 to 30. And do you understand the
25 consequences of your plea here today, it will violate the

1 terms of your probation.

2 A Yes, ma'am.

3 Q And this is a serious offense.

4 A Yes, ma'am.

5 Q All right. And with regards to the serious offense,
6 you know the reason why that's so important is that if you
7 are convicted of three serious offenses, that as you stand
8 accused of that third or more serious offense, if the State
9 deems, if the Solicitor deems that they wish to seek life
10 without possibility of parole and give you notice of that
11 and you have been convicted, then you would spend the rest
12 of your life in prison without possibility of parole. Do
13 you understand that?

14 A Yes, ma'am.

15 Q All right. Very well. And also, if you -- if a
16 person's convicted of one most serious offense and to
17 serious offenses, and the State gives you notice, then you
18 spend the rest of your life in prison without the
19 possibility of parole. You understand that.

20 A Yes, ma'am.

21 Q Okay. Okay. All right. Now, very well. What -- do
22 you -- do you have -- have you contemplated, if you go
23 through with today's plea, what number of strike you -- you
24 would have? Do you know?

25 A If I'm not mistaken, I -- I would be agreeing to maybe

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE

21

1 a third offense.

2 Q A third strike?

3 A Yes. What -- that's what I'm ---

4 Q But without -- but without a request for life without
5 possibility of parole today.

6 A Yes, ma'am.

7 Q Okay. In other words, the State is not asking today
8 for life without possibility of parole, and you haven't
9 received that kind of notice, have you?

10 A No, ma'am.

11 Q Okay. Well, that's good. Now, if you need to sit, I
12 want you to sit.

13 A I'm fine.

14 Q Okay. Okay. Very well. So -- very well.

15 MS. KIMMONS: Your Honor, I think that this is
16 probably the second strike. He has a 1972 conviction for
17 felony murder, and I think that that would probably be his
18 first strike. And I think this conviction here today would
19 probably be the second, unless he knows something that I
20 don't.

21 THE COURT: Does he have -- he has no other
22 distributions ---

23 THE DEFENDANT: No. I don't know anything ---

24 MS. KIMMONS: He does, but it was a first offense.

25 THE COURT: It was not a -- okay.

1 MS. KIMMONS: It was not serious. I think he may be
2 getting strikes confused with first, second, and third drug
3 offenses.

4 DIRECT EXAMINATION BY THE COURT:

5 Q Okay. But that's good though.

6 A Yes.

7 Q The Solicitor believes that this is your -- which --
8 which is a good thing.

9 A Right.

10 Q Okay. And you believe that to be true?

11 A Yes, ma'am.

12 Q While you know this is your third drug offense, it's
13 your second strike.

14 A Thank you, ma'am. Yes, ma'am.

15 Q Okay. Good. All right. Good. Good. Now, do you
16 want to pause at this juncture and talk to Mr. Davis about
17 that? Because I really want you to be clear about that.

18 A No, ma'am.

19 Q Let me ask you this question: If you learned that, in
20 fact, this was more than your second strike today, would
21 you want to review that with Mr. Davis?

22 A (No audible response.)

23 Q What am I saying? I -- no, no, no.

24 A No, no ---

25 Q Let me tell you. I know ---

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE

23

1 A I heard you. I heard you, but ---

2 Q Let me be more clear.

3 A Okay.

4 Q If you were to get to the South Carolina Department of
5 Corrections and they believed this was your third strike,
6 would you want to talk to Mr. Davis about that?

7 A Yes, ma'am, I would.

8 Q Okay. Because you would want to be clear ---

9 A Clear. Right.

10 Q --- that where -- what your -- where you were.

11 A Yes, ma'am.

12 Q I understand. Okay. Very -- so, you're relying on a
13 belief that this is your second strike.

14 A Yes, ma'am.

15 Q But your third drug offense.

16 A Yes, ma'am.

17 Q You know the difference.

18 A Yes, ma'am.

19 Q Okay. Okay. Good.

20 A But you know, that's -- that's ironic, though. I mean
21 -- I mean, that happened when I was a juvenile, 1972. We
22 talking about, what --

23 MR. DAVIS: You're talking about the murder?

24 A -- 38 years, 40 years almost. I mean, that -- that
25 would still apply?

1 Q Oh, yeah. Yeah.

2 A But I guess --

3 Q For your planning purposes here today, I want you to
4 consider it that way.

5 A No. I understand what you're saying.

6 Q And if it not being that, that's to the good.

7 A See, that's -- that's one of the horrors of -- of life
8 itself, you know.

9 Q It is.

10 A It's almost like you can do all right through the
11 Bible with repentance. But if you got a mark against you -
12 -

13 Q That's right.

14 A -- it's gonna stay against you for life --

15 Q That's right.

16 A -- you know?

17 Q And -- and people, young people, it's so hard to
18 instill that in them, that -- that their actions, even if
19 such a young person, can have lifelong consequences, right?

20 A Yes, ma'am.

21 Q And they're almost too young to understand that
22 sometimes, right?

23 A Yes, ma'am.

24 Q But yet -- but yet --

25 A But yet.

DIRECT EXAMINATION BY THE COURT - CONRAD LITTLE

25

1 Q -- you can follow them their whole life.

2 A Yes, ma'am.

3 Q Yeah. And you -- and sometimes you feel like you
4 preach til you're blue in the face, and you don't -- you're
5 so worried that they don't understand that that moment of
6 being so very young, without the appropriate discretion,
7 can have such a lifelong effect. Yes.

8 A Yes, ma'am.

9 Q How bout that.

10 A Can I ask you a question?

11 Q Sure.

12 A In your judgement in -- in dealing with me and the way
13 you're gonna render your decision --

14 Q Uh-huh. Yeah.

15 A -- what -- what -- do you take into consideration the
16 time span that's the difference between ---

17 Q Uh-huh. Sure.

18 A --- trouble and not be in trouble ---

19 Q Yes, sir.

20 A --- in trouble, and things like that?

21 Q Oh, yes, sir. Yes, sir.

22 A Then, ma'am -- then I defer -- I defer all this to --
23 to you and your opinion then

24 Q Okay. All right.

25 A Whatever judgment you're going to make.

1 Q Well, you know -- but let me tell you, you know at the
2 end of the day, what is so critical is that you have
3 peaceableness about your decision.

4 Because -- because I know where I'm -- I'm -- you
5 know, I'm going to my house and I got dogs and cats want to
6 eat, and I got people wanting me to feed. And I got things
7 to clean up. I know what my life is when I go home.

8 You have got to be at peace with your decision above
9 all else. And it may be ---

10 A I'm ---

11 Q --- not be ---

12 A I probably won't be ---

13 Q --- a rosy path.

14 A Yes. I probably won't be ---

15 Q But peaceableness of your decision is important. Do
16 you know?

17 A Well --

18 Q All right.

19 A -- I think God and prayer --

20 Q Yes.

21 A -- will get me where I -- where I need to be.

22 Q Indeed.

23 A Thank you.

24 Q Don't -- and are we -- whether I am -- whether I would
25 be at a SCDC or whether I would be at Summerville, it's

1 both the same.

2 A I understand.

3 Q It's all in His hands, isn't it?

4 A I understand.

5 Q Yes.

6 A You're very compassionate. Thank you.

7 Q All right, sir. All right. Now, so -- so -- so,
8 here's where we are: We have talked about, and I'm so
9 satisfied, that you understand fully the nature of this
10 offense, the maximum possible -- possible penalty, the
11 consequences of your plea, the probation, the strike. I
12 think you understand that.

13 A Yes, ma'am.

14 Q Keeping every bit of this in the forefront of your
15 mind --

16 A Yes, ma'am.

17 Q -- tell me how you plead to distribution cocaine
18 second.

19 A Guilty, ma'am.

20 Q Do you understand that when you plead guilty, that you
21 give up certain very important constitutional rights?

22 A Yes, ma'am.

23 Q We're gonna talk about some of them, not all of them:
24 You give up the right to remain silent, the right against
25 self-incrimination, the presumption of innocence. You give

1 up your right to require the State prove you guilty beyond
2 a reasonable doubt if they can.

3 You give up your right to challenge any incriminating
4 statements that you may have made in your case. You give
5 up your right to challenge any stops, searches, seizures
6 that you think were not appropriate.

7 You give up your right to confront and cross-examine
8 witnesses who would testify against you. You give up your
9 right to summon to come to court witnesses to testify in
10 your defense. You give up your right to present defenses.
11 You give up your right to a jury trial. And there are
12 other rights.

13 You know, and if you chose to go to trial, of course,
14 it would be your decision to choose to testify or not to
15 testify. If you went to trial and chose not to testify,
16 and that we are -- have our jury impaneled, I would
17 certainly tell the jury that they could not consider your
18 decision not to testify, if that was your decision not to
19 testify, on the issue of whether you were guilty or not
20 guilty.

21 In fact, I'd tell them they couldn't even talk about
22 it in the jury room, that it was your Fifth Amendment
23 right; and that the burden was and remained on the State.
24 You didn't have to prove a thing, that the burden is and
25 would remain on the State.

1 So, do you understand your constitutional rights? And
2 I hadn't talked about them all, but do ---

3 A Yes, ma'am.

4 Q And do you understand that these rights are preserved
5 for you at trial, and you waive them when you plead guilty?

6 A Yes, ma'am.

7 Q And is that what you wish to do?

8 A Yes, ma'am.

9 Q Do you clearly understand, finally, that when you
10 plead guilty, that you give up your right to have a jury
11 determine if you're guilty or not guilty? Do you
12 understand that?

13 A Yes, ma'am.

14 Q And do you understand that if I accept your plea, I
15 will sentence you?

16 A Yes, ma'am.

17 Q All right. We're gonna pause, and we're gonna review.

18 You've told me, to this point, that you understand the
19 nature of this offense, it's a drug offense; the maximum
20 possible penalty of 30 years; that you understand the
21 consequences, probation, strike; the number of drug
22 offenses. And now you tell me also you understand your
23 constitutional rights. Keeping all of these things in your
24 mind, do you still wish to continue with your plea?

25 A Yes, ma'am.

1 THE COURT: I need you to listen very carefully to
2 what Ms. Kimmons is going to go over with me. She's going
3 to go over the facts. And when she's finished, I'm just
4 gonna ask you, "Is that what happened?"

5 I need you to correct anything that I am told just to
6 be sure I got an accurate picture.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Because every plea has to have a factual
9 basis.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Yes, ma'am.

12 MS. KIMMONS: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Uh-huh.

15 MS. KIMMONS: This incident occurred on the night of
16 February 23, 2009. On that night, detectives with the
17 Dorchester County/Summerville Metro Narcotics Unit were
18 utilizing a confidential informant to purchase a quantity
19 of cocaine. She indicated that she could purchase cocaine
20 from Conrad Little.

21 Her vehicle was searched and she was searched, and she
22 contacted Mr. Little and ordered two eight balls of
23 cocaine.

24 She got in her car and went to meet with Mr. Little at
25 the Circle K, which is on the corner of Main Street and

1 Highway 78, at which location, she got into his car. And
2 on the video, you can see the hand-to-hand transaction
3 where he passed her the cocaine and she passed him the
4 money.

5 Subsequent to that, as she was getting out of the car,
6 narcotics detective -- detectives busted them right --
7 right then and there. And Mr. Little had the pre-recorded
8 narcotics buy money in his hand, and the confidential
9 informant had the cocaine, which turned out to be 7.07
10 grams of cocaine.

11 THE COURT: All right. And is that what happened?

12 THE DEFENDANT: Sort of.

13 THE COURT: Okay. All right. Tell me -- tell me what
14 you would change about that, because I need to have an
15 accurate picture.

16 THE DEFENDANT: The accurate picture, she called me
17 about 11 a.m. that morning to try to do this same thing.
18 She called me, like, six times that day to try to do the
19 same thing. And I told her I didn't -- I couldn't do
20 anything for her. I -- I hadn't seen the people who I
21 happen to know that -- that has that type of thing.

22 THE COURT: Sure.

23 THE DEFENDANT: And I hadn't seen her. And then when
24 she called me again, maybe an hour before that time that's
25 on there, and I kept -- told her again that I couldn't do

1 nothing.

2 But then, I did see the people, and she wanted -- she
3 -- she asked me where could we meet. And I was, like, can
4 you meet me at this one particular place. And she said
5 yes.

6 And when I got there -- and I was, like, something is
7 -- is kind of strange about this. And we then decided to
8 meet at the Circle K. And then I met at the Circle K,
9 that's when the transaction ---

10 THE COURT: The transaction ---

11 THE DEFENDANT: --- took place.

12 THE COURT: --- transaction ---

13 THE DEFENDANT: She had been ragging me all day about
14 that same thing, and which made me believe now, that she wa
15 pressured into coming up with some kind of positive effects
16 to whatever plea agreement she had made with ---

17 THE COURT: Right. Right.

18 THE DEFENDANT: --- the other people.

19 THE COURT: Right.

20 THE DEFENDANT: And then she in turn, you know, tried
21 to play things off and tell me that it wasn't what it
22 really seemed like, and that I should get in contact with
23 Detective Rodriguez or somebody. And I have to do the same
24 thing to some -- to the people I knew, the way she had did
25 to me. Which I told her that was not an option.

1 THE COURT: I understand.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Yes. Yeah. I understand. I do.

4 THE DEFENDANT: So, it kind of happened that way. But
5 it had been an all day thing.

6 THE COURT: In -- in other words, that was not her
7 first phone call with you.

8 THE DEFENDANT: Oh, no, ma'am.

9 THE COURT: That she had called you several times.

10 THE DEFENDANT: We have phone records and all that,
11 computer show that.

12 THE COURT: Yes. Yes. All right. All right. That
13 causes me no concern. Does it cause you any concern at
14 all, the additional facts? I think it's more information.

15 MS. KIMMONS: No, Your Honor.

16 THE COURT: I -- I think it's ---

17 MR. DAVIS: No, Your Honor.

18 THE COURT: --- I think it's interesting and helpful
19 as -- as I learn more about the circumstance.

20 MR. DAVIS: And already if he was in the prescription
21 business, it'd be a little different. If he ran a
22 drugstore, that'd been all right.

23 THE DEFENDANT: I had -- I had stopped that.

24 THE COURT: Absolutely. I do understand. All right.

25 Now, I am aware that there have been plea

1 negotiations. I've been around some of them, so I'm aware
2 of that. So, my next question really doesn't go to that.
3 I'm really asking you beyond that.

4 DIRECT EXAMINATION BY THE COURT:

5 Q Has anyone promised you anything or held that any hope
6 of any kind of reward to get you to plead guilty?

7 A No, ma'am.

8 Q Has anybody tried to force you or threaten you or
9 pressure you to make you plead guilty?

10 A No, ma'am.

11 Q Have you had enough time to make up your mind, because
12 this has been moving right here today pretty fast -- but
13 have you had enough time to make up your mind that this is
14 what you want to do?

15 A I think enough time, but it's -- it just seem to ran
16 out though.

17 Q Yeah. I know. It really -- it does. It does.
18 Right.

19 MR. DAVIS: It always do.

20 Q It always does. That's right. It always gets down to
21 it. Well, you know, you never know. It might get sweeter
22 as the time goes on. You never know.

23 A Yes, ma'am.

24 Q That's right. But have you -- at the end of the day,
25 have you had enough time to make up your mind?

1 A Yes, ma'am.

2 Q All right. And are you pleading guilty freely and
3 voluntarily?

4 A Yes, ma'am.

5 Q Are you satisfied with the services of Mr. Davis?

6 A I don't know. Yes, ma'am.

7 Q Have you and Mr. Davis fully discussed the charges
8 against you?

9 A Yes, ma'am.

10 Q Have you talked with him for his many times and for is
11 often on those occasions as you believe appropriate for him
12 to properly ---

13 A Yes. I think he represented me right.

14 Q Yes. Yes. And are you completely satisfied with his
15 services?

16 A Yes, ma'am.

17 Q Do you have any more questions that you feel as though
18 you need to ask him at this time?

19 A To just delay this, so ---

20 Q I know. I know. To put this thing off. I
21 understand. I understand.

22 A No, I don't have any questions.

23 Q All right.

24 A All right.

25 Q Very well. Are you completely satisfied with the

1 services?

2 A Yes, ma'am.

3 Q All right. Have you understood my questions?

4 A Yes, ma'am.

5 Q Is there anything you want -- you want to ask me about
6 what we have just been over?

7 A No, ma'am.

8 Q All right. And do you understand that you have a
9 right to appeal your guilty plea and any sentence that I
10 would give you, and if you wish to appeal your guilty plea,
11 you, or an attorney on your behalf, must do so within 10
12 days?

13 A Yes, ma'am.

14 Q If you wish for Mr. Davis to appeal, please let him
15 know as soon as you know.

16 A Yes, ma'am.

17 Q In -- in writing -- if you could do that in writing
18 and send it or whatever, and you keep a copy, that would be
19 wonderful, too. Very well.

20 Now, with respect to each and every answer that you
21 have given me here today, have you been absolutely candid
22 and truthful?

23 A Yes, ma'am.

24 Q And have your answers then your answers?

25 A Yes, ma'am.

1 Q Anybody tell you how to answer my answers [sic]?

2 A No, ma'am.

3 Q Are they your answers?

4 A These are my answers.

5 THE COURT: I find that there is a substantial factual
6 basis for this plea; and I find that the decision of Mr.
7 Little to plead guilty is freely, voluntarily, knowingly,
8 and intelligently made; that he has had the advice of
9 counsel, with whom he tells me he is satisfied; and I'll
10 accept the plea.

11 All right. Record.

12 MS. KIMMONS: He has a 1972 felony murder; 1987
13 misdemeanor assault; 2001 possession of cocaine; 2002
14 failure to appear on a misdemeanor charge. Those are all
15 from out of state, Your Honor.

16 THE COURT: Okay.

17 MS. KIMMONS: And in South Carolina, he has two counts
18 of distribution of cocaine in 2008, for which he is on
19 probation right now.

20 THE COURT: That's that distance, long distance --
21 that period you were talking about. 2008 in -- in such a
22 long period of time.

23 MR. DAVIS: In 10 years.

24 THE DEFENDANT: Yes, ma'am. I was on -- I was on
25 drugs for nine years. And right before I came to South

1 Carolina, I got off of drugs.

2 THE COURT: Right.

3 THE DEFENDANT: And I been pretty good, but trouble
4 just -- you know, it been a long time, you know, I had
5 walked the street. And I don't -- I don't know. There's a
6 lot of things in South Carolina I'm not familiar with.

7 In -- you know, I got in a argument recently and they
8 tell me it's a burglary one charge, you know. Stuff like
9 that. I -- I don't understand it. But that's the laws of
10 South Carolina. So, I have to deal with that.

11 THE COURT: I do understand.

12 All right, Mr. Davis.

13 MR. DAVIS: Judge, you know, I've argued very
14 vigorously for this young man all day. I want to share
15 with you some connection. It's just not by chance that I'm
16 here. His daughter is -- is married to my first cousin's
17 son. That's how I got -- his daughter is married to my
18 first cousin's son.

19 THE COURT: Got it.

20 MR. DAVIS: Okay.

21 THE COURT: Uh-huh.

22 MR. DAVIS: So, his daughter is married to my second
23 cousin.

24 THE COURT: Right.

25 MR. DAVIS: Okay. And so, that's how I find myself

1 representing Mr. Conrad Little.

2 I had hoped, Your Honor, when I represented him in
3 2008, that we would never find ourself [sic] back in front
4 of a -- this kind of scenario. And I'm gravely
5 disappointed.

6 And he will share with you that in relationship for
7 why we're here today, that he's had multiple conferences in
8 my office. Okay.

9 And I want to commend Ms. Kimmons, because you know,
10 Christmas, November, she offered me five years. It would
11 have taken an act of Congress for Mr. Little to accept it.
12 He just never would have accepted it. I knew that. And
13 she gave me a time frame. I brought him in my office, and
14 we sat down twice and talked about it. So, he understood.

15 And so, we find ourself [sic] in a dilemma now, that
16 the time have kind of aggravated -- well, gotten larger,
17 you know. But I don't think Mr. Little would have accepted
18 it, okay, back then.

19 Now, we're here. He -- he shows remorse, and he's
20 made the decision to readily admit what he's done. \$300
21 worth of cocaine, you can't sell it. Unfortunately, this
22 young lady who did it to him, did him -- did him -- did him
23 well. She could have asked for \$60 worth of cocaine. She
24 could have asked for any amount, but she picked two eight-
25 balls. And so, you know, with friends like that, I try to

1 tell him there's no friends in the drug business.

2 So, he finds himself here at the mercy of the Court.

3 But I do want to thank Ms. Kimmons, because she allowed us
4 to move from the third offense to the second offense. And
5 I think that was very gracious of her. You know, and so I
6 commend her for that.

7 My client readily is prepared to accept his
8 punishment, Your Honor. Unfortunately, he finds himself
9 medically in one of the worst conditions to go into
10 Department of Correction. They got all kind of budget
11 shortfalls, and here he finds himself in a position that he
12 has to actually be on a dialysis machine at least three
13 days a week for up to -- sometime five or six hours.

14 So, if it's one thing I heard of all this plea's
15 potential that even in the Department of Correction, they
16 can suspend some portion of his sentence if they see fit.
17 I think I heard that in the midst of everything. And I'm
18 not giving him that as some kind of olive in this, you
19 know.

20 The bottom line is, you know, you're going to impose
21 the sentence, the Department of Correction is going
22 determine when he gets out, regardless of whether his
23 illness or sickness bear any part in that, I just ask you
24 just to take that in consideration, Your Honor.

25 THE COURT: Very well. Thank you, thank you.

1 Now, let me ask this question, because I know that --
2 I know that Mr. Little has been -- has been in this time
3 for 30 days. But there -- was there a period earlier
4 before he bonded out the first -- you know, the -- after --
5 after the arrest on this charge?

6 (Mr. Davis confers with the defendant.)

7 MR. DAVIS: Like two weeks, Your Honor. That's about
8 it.

9 THE COURT: Okay. Okay. All right. Ms. James, what
10 you want to tell me about the probation? Is this his only
11 violation? No. He stopped reporting.

12 AGENT JAMES: Yes, ma'am. We were in the process of
13 issuing a warrant for him ---

14 THE COURT: Okay.

15 AGENT JAMES: --- at this time.

16 THE COURT: Okay. And what is Mr. Little's position
17 regarding whether or not he has willfully failed to follow
18 the terms and condition of his probation?

19 MR. DAVIS: He -- he -- he will admit that he's
20 willfully failed.

21 THE COURT: And I will so find.

22 MR. DAVIS: Yeah.

23 THE COURT: And we've talked about that today, that
24 irrespective of anything else, the conviction here today
25 would -- would -- would be a violation.

1 (Mr. Davis confers with the defendant.)

2 THE COURT: All right. All right. Here's -- here's --
3 - here's what I'm -- what I'm going to do: With regards to
4 2009-GS-18-575, which is the indictment for distribution of
5 cocaine, second offense, Mr. Little, I am going to commit
6 you to the State Department of Corrections for 12 years.

7 With regards to the probation, I'm going to revoke Mr.
8 Little's probation, and run these concurrent, concurrent.

9 MR. DAVIS: Okay. Thank you, Judge.

10 THE COURT: Absolutely. And -- and also, though, I --
11 I want -- Ms. James, I want you to do it, too. And Ms.
12 Kimmons, I -- just be sure the jail does it also.

13 I want the Department of Corrections to understand
14 that Mr. Little -- his -- his medical circumstance.

15 MR. DAVIS: Yeah.

16 THE COURT: Because today is today, and tomorrow is
17 when he's scheduled for dialysis. So, that if they intend
18 to -- to transport him today, they've got to get him set up
19 for tomorrow. Otherwise, they probably ought to take him
20 tomorrow and then -- in other words, I don't want him
21 sitting for two weeks --

22 MS. KIMMONS: Right.

23 THE COURT: -- while -- without the dialysis.

24 MR. DAVIS: Thank you, Judge.

25 THE COURT: They've got to be ready to receive him and

1 -- and have him on dialysis. I don't want there to be a
2 skip, so to speak.

3 So, I'm gonna put down here to notify SCDC of Mr.
4 Little's dialysis --

5 MS. KIMMONS: D-i-a-l-y-s-i-s.

6 THE COURT: -- needs, and coordinate. All right. I
7 guess the jail -- you just need to be sure the jail knows
8 that.

9 MS. KIMMONS: Right. I'll call the jail and make sure
10 ---

11 THE COURT: Yeah. Just the nurser or whoever. Make
12 sure that happens.

13 MS. KIMMONS: --- that either it's set up or ---

14 THE COURT: Because you know, that's -- they don't
15 really move that quickly. They got to. All right. All
16 right.

17 MS. KIMMONS: Thank you, Your Honor.

18 THE COURT: Thank you, ma'am.

19 -- END OF TRANSCRIPT OF RECORD --

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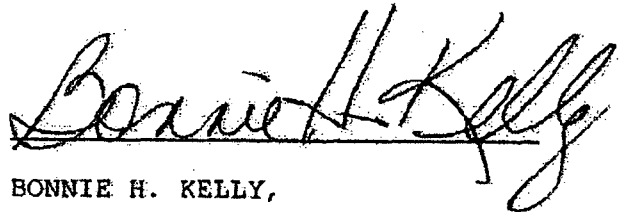
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25

1 CERTIFICATE

2
3 I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT
4 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
5 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
6 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL
7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
8 REQUESTED PORTION OF THE HEARING OF THE CAPTIONED CAUSE,
9 RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER
10 COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF JUNE, 2010.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
12 COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

13
14 

15
16 BONNIE H. KELLY,

17 COURT REPORTER

18
19 COLUMBIA, SOUTH CAROLINA

20 OCTOBER 23, 2011

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of DORCHESTER)CONRAD LITTLE 341316)

Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

2011-CP-18- 1610

APPLICATION FOR

POST-CONVICTION RELIEF

2011 AUG 15 PM 2:18
CLERK OF COURT
DORCHESTER COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTE
MONT 142, COLUMBIA, S.C.
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
1st CIRCUIT, SEAT 2 5800 E. JIM BUTON BLVD, ST. GEORGE, SC
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009GS18-0575
 - (b) A/W #J093473
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 06/15/2010 12 YEARS
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty YES

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) ATTORNEY FAILED TO ADVISE TO APPEAL

(b) INEFFECTIVE COUNSEL IN PLEA BARGAINING PROCESS

(c) LACK OF EFFORT IN PREPARATION OF TRIAL

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) ATTORNEY FAILED TO PROPERLY PREPARED DEFENSE

(b) ATTORNEY FAILED IN PLEA BARGAINING PROCESS

(c) ATTORNEY FAILED TO FILE FOR APPEAL

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PLEA BARGAINING PROCESS - ATTORNEY ONLY SAID ME THE DAY OF MY TRIAL.
 (b) AN EXCESSIVELY HARSH OR BRUSQUE SENTENCE

(c) MISREPRESENTATION OR INCORRECT INFORMATION by ATTORNEY - THERE WAS NO CONSULTATION FOR OPTIONS AFTER TRIAL.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?

NO

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

- (b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) INEFFECTIVE COUNSEL FROM ATTORNEY
- (b) LACK OF CONTACT FROM ATTORNEY - BEFORE OR AFTER TRIAL
- (c) NO FURTHER CONTACT FROM ATTORNEY AT ALL

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
NO
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. STEVE DAVIS, DAVIS LAW FIRM, MONCKS CORNER, S.C.
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

CASE DISMISSED, SENTENCE VACATED, NEW TRIAL,
SENTENCE REDUCTION

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
COUNTY OF Dorchester)

VERIFICATION

I, CONRAD LITTLE, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Conrad Little

Sworn to and subscribed before me

This 9th day of June, 2011.

Susan H. Frye L.S.

Notary Public for South Carolina

My Commission Expires March 5, 2018

2011 AUG 15 PM 2:18
CLERK OF COURT
DORCHESTER COUNTY

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, CONRAD LITTLE, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Conrad Little

Applicant

Sworn to and subscribed before me

This 9th day of June, 2011.

Susan H. Frye L.S.

Notary Public for South Carolina

My Commission Expires March 5, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Conrad Little, #341316,	)	2011-CP-18-1610
	)	
Applicant,	)	RETURN AND MOTION TO DISMISS
	)	ALL ALLEGATIONS EXCEPT <u>WHITE</u>
v.	)	BELATED DIRECT APPEAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 15, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was true bill indicted at the August 2009 term of the Dorchester County Grand Jury for Distribution of Cocaine. (2009-GS-18-0575). He was represented by Steve Davis, Esquire. On June 15, 2010, the Applicant pled guilty to Distribution of Cocaine – 2nd Offense before the Honorable Diane S. Goodstein and was sentenced to twelve (12) years imprisonment pursuant to a negotiations, in addition to concurrent sentence for time revoked on his outstanding probation. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Attorney failed to properly prepare defense.
- b. Attorney failed with plea bargaining process.
- c. Attorney failed to file for appeal.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent submits that all allegations except the allegation regarding a direct appeal should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense(s) he challenges in this Application on June 15, 2010. The Applicant was therefore required to file his application on or before June 16, 2011. This Application was filed on August 15, 2011, almost a full month beyond the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Applicant claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never

voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

[Signature on Next Page]

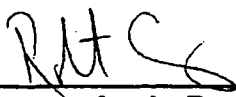
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

November 8 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-1610
	)	
CONRAD LITTLE, 341316,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss All Allegations Except White Belated Direct Appeal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jason Green, Esquire
Post Office Box 50491
Summerville, SC 29485

DATED this 8th day of November, 2011

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF DORCHESTER

CIRCUIT COURT
2011-CP-18-01610

3
4
5 CONRAD LITTLE,
Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 Post Conviction Relief Hearing
11 Heard on Wednesday, May 22, 2013
12 Orangeburg, South Carolina

13
14 BEFORE:

15 THE HONORABLE EDGAR W. DICKSON

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
19 Natalie Powers, Esq.

20 Counsel on Behalf of the Respondent, State of SC:
21 Daniel Gourley, Esq.

22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29803-5232

EXAMINATION INDEX

CONRAD LITTLE

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STEVE C. DAVIS

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MAR ADM

State's

1 Letter dated 110509

46 46

1 ON WEDNESDAY, MAY 22, 2013 AT 10:31 A.M.:

2 MR. GOURLEY: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. GOURLEY: Your Honor, the next case is Conrad
5 Little versus the State of South Carolina, Docket Number
6 2011-CP-18-1610. The Applicant was true bill indicted at
7 the August 2009 term of the Dorchester County Grand Jury
8 for distribution of cocaine. Steve C. Davis, Esquire,
9 represented him.

10 On June 15th, 2010, Applicant pled guilty as indicted.
11 The Honorable Judge Goodstein sentenced Applicant to 12
12 years imprisonment pursuant to negotiations.

13 Applicant filed an application for post conviction
14 relief on August 15th, 2011, alleging he was being held in
15 custody unlawfully for ineffective assistance of counsel.
16 Specifically attorney failed to properly prepare a
17 defense, attorney failed in plea bargaining process and
18 attorney failed to file for appeal.

19 Your Honor, the State filed its return, motion to
20 dismiss all allegations except for the alleged failure to
21 file a direct appeal. Mr. Little failed to file his
22 application within the one-year statute of limitations
23 requirement.

24 THE COURT: All right. And you are Ms. Powers?

25 MS. POWERS: Yes, Your Honor.

1 THE COURT: How are you?

2 MS. POWERS: I'm good. How are you doing this
3 morning?

4 THE COURT: I'm good, thanks. Are you ready to go
5 forward?

6 MS. POWERS: Yes, Your Honor, on both the motion and
7 the PCR if you'd like.

8 THE COURT: Okay. Well, what motion?

9 MS. POWERS: His motion to dismiss.

10 MR. GOURLEY: Motion to dismiss the --

11 THE COURT: I'm going to let him go forward. This is
12 his only shot. And I understand it's over a year.

13 MR. GOURLEY: Yes, Your Honor.

14 THE COURT: I'll take that under consideration but
15 since he's here, I'm going to go ahead and let him --
16 we'll go ahead and do that.

17 MR. GOURLEY: Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 MS. POWERS: Thank you, Your Honor.

20 Your Honor, I'd like to call to the stand Mr. Conrad
21 Little.

22 THE COURT: Okay. Mr. Little. Mr. Little, when you
23 get up, before --

24 THE APPLICANT: I'll do the best I can, Your Honor.
25 I'm a dialysis patient. I was supposed to have dialysis

CONRAD LITTLE - DIRECT

1 this morning.

2 THE COURT: Mr. Little, before you sit down, do you
3 mind standing up, putting your left hand on the Bible,
4 please, sir?

5 THE APPLICANT: Left hand?

6 THE COURT: Yes, sir.

7 THE APPLICANT: I thought it was the right hand.

8 THE COURT: You'll raise your right hand as best you
9 can.

10 THE APPLICANT: Okay. All right.

11 CONRAD LITTLE, having been duly sworn, was examined
12 and testified as follows:

13 THE COURT: All right, sir. Now you can sit down.

14 THE APPLICANT: Thank you.

15 THE COURT: Thank you, sir. All right. Ms. Powers?

16 DIRECT EXAMINATION

17 BY MS. POWERS:

18 Q. Mr. Little, you were -- you hired Mr. Davis in this
19 action to represent you?

20 A. Yes, sir (sic); I did.

21 Q. And how did that come about?

22 A. My daughter's married to his cousin. He is the cousin
23 of my daughter's husband.

24 Q. Okay.

25 A. And in looking for a lawyer they told me that Ozzie,

CONRAD LITTLE - DIRECT

1 which is my daughter's husband name, that his cousin was a
2 lawyer and they put me in contact with him.

3 Q. Just to clarify. You hired him to represent you in
4 the general sessions case we're discussing here today?

5 A. Yes, ma'am.

6 Q. Okay. And did you meet with Mr. Davis about your
7 case?

8 A. Yes, ma'am.

9 Q. Can you tell the Court about when you met with him?

10 A. I met, I got his address and I met with him in his
11 office. I don't know his address because I'm not
12 originally from South Carolina, you know. There's a lot
13 of areas that I do go to that I know where people houses
14 is but I'm not familiar with the address.

15 I didn't know his phone number because once I
16 programmed it in my phone, all I did was hit his name and
17 it would draw his name -- his number.

18 Q. Okay. And when you went to court for your trial date,
19 were you incarcerated at that time?

20 A. Yeah. I had a subsequent charge of burglary one.

21 Q. I'm sorry. So, did you have access to your phone when
22 you went to court?

23 A. No.

24 Q. Okay. Did you have access to his address at that
25 time?

CONRAD LITTLE - DIRECT

1 A. No.

2 Q. Did he talk to you while you were waiting to get to
3 trial?

4 A. No.

5 Q. Did he talk to you that morning?

6 A. I never talked to him.

7 Q. Can you repeat that?

8 A. I never talked to him from the time I was picked up on
9 my, in the year 2010. I seen him in January. I never saw
10 him again until the day I went to court.

11 Q. Okay. And the day you went to court, can you tell us
12 what happened that day?

13 A. I had just come from dialysis. I had no previous
14 knowledge that I was going to be tried. When I came back
15 from dialysis they told me that my attorney was there.

16 So I thought I was, like, okay, he found out I'm in
17 jail now. I'm going to find out what's going on. But
18 when they took me, when they took me to see him, they had
19 me changed from out of my jail clothes and put on some
20 regular street clothes. And I don't know who they come
21 from. They say I couldn't go into court like I was
22 dressed.

23 And I saw Mr. Davis. And they was telling me that
24 they was going to try me right then. When I looked in the
25 courtroom, the courtroom was full of people. There was

CONRAD LITTLE - DIRECT

1 more people in there than in here now. And I asked him
2 what was all them people for. He told me that they were
3 going to try me that day regardless and that those people
4 were a prospective jury.

5 Q. Okay. And then can you tell us what happened after
6 that?

7 A. I didn't like it. I thought I was being railroaded.
8 I told him that I didn't like it. I wanted to ask him to
9 postpone it. He told me they weren't going to do that
10 anymore.

11 And so we went through the process of selecting all
12 the way up to the seventh or eighth juror for my trial.
13 And then I was like, man -- and he was telling me that
14 because this was going to be a jury trial that they were
15 going to ask for the maximum, 30 years for a quarter
16 ounce, a thousand.

17 And I said, man, this just really doesn't make any
18 sense. And I was a little confused. I had just come from
19 dialysis. So, I asked him what were they offering. They
20 called a time out. They went over to the, to him and the
21 solicitor. They got together. They went to the juror's
22 office -- to the judge. And they talked to the judge and
23 in talking to the judge they came back. Then she told the
24 stenographer to go back on the record and then they
25 offered me, I accepted the 12-year deal. They dismissed

CONRAD LITTLE - DIRECT

1 the jury, all the prospective jury. I took the plea for
2 12 years rather than go through a jury trial.

3 Q. And in the transcript, there were quite a bit of times
4 the judge was explaining things to you; is that correct?

5 A. The judge explained to me something about some new
6 laws that went into effect June the 1st. I didn't know
7 anything about them. Mr. Davis didn't know anything about
8 it. They started telling me things about three strikes
9 and habitual offender, and I didn't know anything about
10 that.

11 And then they were, they went back and they say, well,
12 your record in Virginia is part of your record here and
13 even went back to 1972 to try to bring some stuff up. I
14 didn't really understand it.

15 I mean, I'm competent but it was a little confusing
16 the way it was explained.

17 Q. Okay. Did you tell the Court you were confused?

18 A. No. I knew what she was saying, but I didn't
19 understand the intricacies of what they were saying. I
20 didn't know how, you know -- mostly I was asking him to
21 explain things to me. He was saying, I gotcha, I gotcha.

22 I said, well, okay, I'm going to go along with this
23 because he's going to explain things to me. Even during
24 the middle of our trial, even when I took the plea I told
25 him, man, I really don't like this, you know. I'm not

CONRAD LITTLE - DIRECT

1 sure what this mean. I know I'm going to have to appeal
2 this. I know I'm going to have to appeal this.

3 So then he tells me everything is okay. Wait. I'll
4 come in the back and we'll go through some information.
5 And I never saw him till today.

6 Q. Did he come in through the back?

7 A. I never saw him again until today.

8 Q. So he didn't come in the back?

9 A. No.

10 Q. Did he come see you in jail after that?

11 A. No.

12 Q. Did he come see you at the correctional facility?

13 A. No.

14 Q. Has he written you?

15 A. No.

16 Q. Okay. Did you -- at the hearing they talked about
17 writing Mr. Davis about an appeal; correct?

18 A. In the hearing, right, the judge told -- said that if
19 I was going to appeal, I had, need to put it in writing
20 within 10 days in a letter or something, to send to him
21 asking for a form of appeal. And that's the way it was
22 done.

23 Q. Okay. And did you do that?

24 A. He never came in the back for me to get his address.

25 I never knew his address. I knew how to get to where he

CONRAD LITTLE - DIRECT

1 was in Moncks Corner.

2 So even when I filed it on my PCR, I just say Steve
3 Davis, Davis Law Firm, Moncks Corner, South Carolina. I
4 didn't know a number or an address.

5 Q. Did you have a phone number for him?

6 A. In my phone?

7 Q. No. Once you did the plea, did you have a phone
8 number after the plea?

9 A. No, it was just in my phone. But I, you know -- the
10 jail wasn't going to let me, call me down to booking, go
11 into property and say, okay, get your lawyer's number out
12 of the phone. No. So I never had access to his phone
13 number.

14 Q. And did you ask anyone else to help you try to get his
15 information?

16 A. I asked people at the jail to help me get it.

17 Q. And what was -- what happened after that?

18 A. I never, they never gave it to me. I never got it
19 from anyone.

20 Q. And did you have access to any phone books or
21 anything?

22 A. No.

23 Q. So, could you have written Mr. Davis if you had wanted
24 to write him?

25 A. No, I had no way to write him.

CONRAD LITTLE - DIRECT

1 Q. Okay. And had he written you any letters while you
2 were awaiting for trial?

3 A. I never received mail from Mr. Davis.

4 Q. So you wouldn't have had any letterhead with his --

5 A. No.

6 Q. -- address or anything like that?

7 A. No, he's not like you.

8 Q. And you're asking -- and according to your
9 application, you are asking for a new trial, and you're
10 asking for them to either dismiss the case, give you a new
11 trial, vacate your sentence, or give you a sentence
12 reduction?

13 A. That's what I was asking for; yes, ma'am.

14 Q. Okay. And is there any other reason why you believe
15 that you had ineffective assistance of counsel?

16 A. Some of the things that was going on inside of the
17 transcript of the trial itself; the things that he said;
18 the things that he did not say; the things that he did not
19 do; the things that he did do.

20 Q. Can you explain a little bit more detail what, to the
21 Court?

22 A. I don't, I have a copy of my transcript on the table
23 there, but I can't go to the specific page. But it's like
24 over half. I got, like, I think, a 42- or 44-page
25 transcript.

CONRAD LITTLE - DIRECT

1 Mr. Davis doesn't really say anything to defend me
2 until maybe like page 30, 31. So the first 31 pages he's
3 not making no record. He's saying things like, Your
4 Honor, you know, he wouldn't took a deal, I got him a deal
5 for five years, when he did not get me a deal for
6 nothing.

7 The deal for five years came from the first attorney I
8 had whose name was John Law (verbatim). He negotiated a
9 five-year sentence for me and which they was giving me the
10 five-year sentence or the offer for the five-year sentence
11 just before Thanksgiving.

12 Q. But did you take that?

13 A. I didn't take it because I wanted to spend the
14 holidays on the street --

15 Q. Okay.

16 A. -- with my family.

17 Q. So let me clarify. So there were times during the
18 hearing that you felt Mr. Davis didn't assist you, didn't
19 explain to you what was going on when he maybe should
20 have?

21 A. Yes, ma'am. It was things he could have objected to
22 that was being said by the solicitor.

23 Q. Did you tell the Court that when you were there in the
24 courtroom?

25 A. I don't have a chance to tell him that. It's not,

CONRAD LITTLE - DIRECT

1 it's not like that judge right there. I'm going to stop
2 and ask him anything. Because I don't have a chance to
3 tell him that.

4 So if you don't ask me a question in a way that I can
5 bring this up, then I can't continue.

6 Q. Did you feel like you were being coerced into taking a
7 plea deal that day?

8 A. I felt like I was bullied. I even wrote you and told
9 you that and you wrote me back and asked me what did I
10 mean by bully. Bully. I feel -- I felt like I was
11 bullied because when they was choosing, when we were
12 choosing the jury before I asked him for the 12-year deal,
13 he kept telling me about taking this trial and taking the
14 jury trial, they're going to ask for the maximum.

15 I'm saying, man, ain't nobody going to give me 30
16 years on a little quarter ounce of powder, you know what
17 I'm saying on, on a little bust-buy situation. And he was
18 like man, you know, you're sending these people through
19 all of this trouble and you're doing all these things.

20 I'm saying, man, who are you working with, them or are
21 you working for me? You know what I'm saying? I'm
22 thinking that I hired him for his expertise, not saying
23 that his expertise means that he can get me personal
24 favors. But I'm hiring him for his expertise because 30
25 years is not what we're talking about.

CONRAD LITTLE - DIRECT

1 You're going to offer me five years to clear your
2 books before the end of the year. Now because I wanted to
3 be on the street to do the holidays with my family, so
4 when the court set my trial date for January it just so
5 happened in January Mr. Davis had a previous commitment to
6 be in court in Horry County.

7 You can check his records because that's the way it is
8 in the, in the files, you know. He had a previous
9 engagement.

10 Q. How did you find out about the Horry County hearings?

11 A. That's how I found out because when I went back to
12 court on the day that they was supposed to try me in
13 January, they said he had -- it was, unfortunately he
14 couldn't be there. He had previous engagements in Horry
15 County.

16 Q. Being --

17 A. And I'm sure if you check his records you'll see that
18 he was somewhere in Horry County.

19 Q. And had he met with you before that date to prepare
20 for trial?

21 A. I met him. Yeah, I had met with him.

22 Q. Okay. And did you tell the judge you didn't want to
23 take the plea at all?

24 A. No, I didn't.

25 Q. Okay. And, but did you explain to the judge you

CONRAD LITTLE - CROSS

1 wanted to talk with Mr. Davis?

2 A. Yes, I did.

3 Q. And did you explain to Mr. Davis that day you needed a
4 little more explanation?

5 A. Yes, I did. And he --

6 Q. And did you understand he was going to come back --

7 A. Yeah.

8 Q. -- and talk?

9 A. Yeah, with the understanding that he was going to come
10 back and talk to me; yes, ma'am.

11 Q. Okay. And did he ever talk to you about anything that
12 went on that day?

13 A. I never saw him again until today.

14 MS. POWERS: I have nothing further at this time, Your
15 Honor.

16 THE COURT: Nothing further?

17 MS. POWERS: Not at this time.

18 THE COURT: Okay. Mr. Gourley?

19 MR. GOURLEY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GOURLEY:

22 Q. Mr. Little?

23 A. Yeah.

24 Q. How many times did you meet with Mr. Davis prior to
25 your guilty plea?

CONRAD LITTLE - CROSS

1 A. Twice.

2 Q. And do you recall reviewing discovery with Mr. Davis?

3 A. There was nothing on the tape when I went there.

4 Q. But he did bring discovery, and you reviewed it with
5 him?

6 A. He told --

7 Q. That the State had against you?

8 A. He told me he had discovery evidence. I went to his
9 office. He told me to meet him in his office. I went to
10 his office. Okay. They showed me photographs of the
11 marked money or the money that they had serial numbers off
12 that was used in the bust-buy situation.

13 They had a DVD disk. Mr. Davis played the DVD disk
14 and during the whole time I was there, either he couldn't
15 get it to work or it was just a lot of static.

16 Q. Okay.

17 A. So I never saw evidence of the bust-buy situation in
18 which they said they had proof of. I never seen it.

19 Q. As a matter of fact, this whole drug deal was set up
20 through a confidential informant?

21 A. Yes, it was.

22 Q. And it was filmed?

23 A. Yeah.

24 Q. And you knew that; correct?

25 A. No. That's what they told me. Yeah, I knew I was set

CONRAD LITTLE - CROSS

1 up, yeah.

2 Q. Okay. Did you discuss any possible defenses with your
3 attorney?

4 A. Yes, I did.

5 Q. And what were those?

6 A. The defenses that was during the bust-buy situation
7 that I was willing to take that five-year offer that
8 Mr. Loy had brought to the table.

9 Q. So you were willing to take the five-year plea?

10 A. Yes, yes, I was.

11 Q. But just a minute ago you said you weren't willing to
12 take a five-year plea?

13 A. No, I didn't say that. You asked me -- if she can
14 repeat the question, I can tell you why I answered what I
15 did. But, no, you asked me something about some kind of
16 defense that Mr. Davis offered.

17 Q. I understand.

18 A. Right. And that's what I thought is who you were
19 talking about.

20 Q. I apologize. In regard to the five-year deal --

21 A. Okay.

22 Q. -- you did not take that; correct?

23 A. No, I didn't.

24 Q. Okay. Thank you.

25 And did you give Mr. Davis any potential witnesses or

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1 leads to investigate on your behalf?

2 A. I told him about the person. I told him what had
3 happened to the person and why they set me up in the bust-
4 buy situation.

5 Q. And who is the person?

6 A. I know her middle -- well, we know her by her middle
7 name, Danielle, but her name was Jennifer so-and-so. I
8 forget her name.

9 Q. And you're referring to the person that contacted you
10 to set up the buy?

11 A. Right. She had got, earlier that morning around
12 10 a.m. for some reason the police went to her house, saw
13 her and some friends in the house, caught them with some
14 meth, some coke and some weed. And then she initially
15 offered to give me up in order to lessen or lighten the
16 load of what happened at her house that morning.

17 Q. Okay. And in regards to any plea offers, did you
18 discuss those with your attorney?

19 A. In what way are you asking me that?

20 Q. Well, you pled to 12 years. So you did have a plea
21 offer; correct?

22 A. On the stand; yes, sir.

23 Q. And originally you had a plea offer of five years
24 which you just stated?

25 A. From Mr. Loy. Yes, sir. Yes, sir. That five years

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1 had nothing to do with Mr. Davis.

2 Q. But you did have a plea offer for five years?

3 A. Yes, sir.

4 Q. That you refused to take regardless of whether it was
5 with Mr. Davis or not?

6 A. I refused to take that because it was during the
7 holidays; yes, sir.

8 Q. And speaking of the holidays, you were concerned about
9 the birth of your child; correct? No. Excuse me.
10 Never mind. Strike that. Apologize, Your Honor.

11 All right. And in regards to your plea offer, you
12 were allowed to plead to second offense instead of third
13 offense, correct, regarding the third strike rule?

14 A. I don't know. That's what I'm saying. When they was
15 explaining the new rules-- of course, I also said in court
16 that I understood it, thinking that Mr. Davis was going to
17 explain that to me more clearly because I was asking him
18 about that.

19 But, no, I didn't, I didn't understand what that --
20 even now I don't even understand it after reading the
21 first strike and all of that kind of stuff. I don't, I
22 don't understand that.

23 Q. You didn't understand that?

24 A. No.

25 Q. Did you tell the judge you didn't understand that?

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1 A. No, I didn't tell her because Mr. Davis assured me
2 that he was going to explain those things to me.

3 Q. So after the judge went through and explained
4 everything to you and you didn't understand it, you didn't
5 feel like it was necessary to say, hey, Judge, I don't
6 understand this?

7 A. No, I didn't.

8 Q. Okay.

9 A. I felt that I should be trusted -- I trusted my
10 attorney enough that I would have a proper understanding
11 of it.

12 Q. Well, Mr. Little, who's doing the time?

13 A. I am.

14 Q. Not Mr. Davis?

15 A. That's right.

16 Q. So, if you're doing the time you don't feel it's
17 necessary to speak up for yourself regardless of what
18 Mr. Davis says?

19 A. Well, you know, that's being belligerent in court. I
20 don't understand, or that's showing you that I'm getting
21 angry or some type of situation in which you're pushing my
22 buttons the wrong way. No, I wanted to cooperate on this
23 thing --

24 Q. No, I understand that.

25 A. -- in order to see or to make those proceedings not be

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1 against me, but to go along with the Court with the
2 understanding that my attorney would explain to me
3 properly --

4 Q. Okay.

5 A. -- exactly what was happening.

6 Q. All right. Mr. Little, it was your decision to plead
7 guilty; wasn't it?

8 A. Yes, it was.

9 Q. And you are guilty of these crimes?

10 A. Yes, I am.

11 Q. Do you recall agreeing with the facts stated in the
12 record by the State, the recitation of the facts,
13 discussing the confidential informant, the video and the
14 buy, everything like that that the State explained to you
15 and you agreed to; do you recall that?

16 A. No. Those issues didn't come up in my --

17 Q. Those issues didn't come up?

18 A. No, sir; they didn't.

19 MR. GOURLEY: Beg the Court's indulgence?

20 THE COURT: Take your time.

21 THE APPLICANT: I brought those issues up. They
22 didn't. No one asked me anything about that because I
23 took a plea deal.

24 When the judge asked me on one of those pages how did
25 I feel about it, and I explained to her that it was a

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1 bust-buy situation. And I brought that up into that
2 transcript. No one else led me into that. I brought that
3 up. I told her what type of situation it was because I
4 pleaded guilty. And she asked me how did I feel about it
5 and I told her I really didn't like that, I said, but it
6 was a bust-buy situation that this person had gotten in
7 trouble at 10 o'clock that morning and this incident
8 happened almost at midnight of the same day that she got
9 locked up.

10 And I also spoke about my phone records, that you
11 could see that she called me over, anywhere from six to 10
12 times that day to try to get me to get her something
13 because she knew I knew people who had something. And
14 that's why I said it was a bust-buy situation.

15 Q. So just let me clarify that. The solicitor did state
16 certain facts on the record and you felt that those didn't
17 portray an accurate picture of what actually occurred.
18 And therefore you clarified those to the judge?

19 A. Right. Just like I just clarified them on the record
20 now.

21 Q. Thank you, Mr. Little.

22 A. Yes, sir. I did the same.

23 Q. With regard to those phone records and all that
24 information that you just stated, did you give that to
25 Mr. Davis?

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1 A. I asked him -- that was one of the things I asked him
2 to check into.

3 Q. And, Mr. Little, do you recall telling the judge that
4 you were satisfied with Mr. Davis's representation?

5 A. Yes, I do.

6 Q. And you didn't feel it was necessary to tell the judge
7 that you had these problems with Mr. Davis prior to your
8 pleading guilty?

9 A. I also told the judge that I thought she did a better
10 job of helping me than Mr. Davis. It's also in the
11 transcript.

12 Q. It is.

13 A. That's right. I felt like the way she was doing
14 things and the things that she was saying and doing, she
15 was giving me the type of things that I was expecting from
16 him. So, yeah, I went along with that trial and
17 everything because I felt like she was giving me the best
18 opportunity that she could give me within the limits of
19 the law. And I accepted that on -- at that time on the
20 basis that I was, I was, man, I felt real good. I felt
21 that, you know, she was my guardian angel.

22 Q. Yes, sir.

23 A. Because Mr. Davis did things that -- he was saying --
24 if you read the trial, if you look at the trial, the
25 things he was saying, he was, like, part of your team.

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1 instead of my team.

2 Q. Okay.

3 A. So I went along with it. And when she said, I'm going
4 to give you the 12 years. She also said at my sentencing,
5 Mr. Little, I'm going to help you out. I don't know if
6 that's in that record but I don't really know if they do
7 that part. She made it -- even though it was serious
8 because of the second offense, she made it nonviolent.
9 She said she put a stipulation in the call that it would
10 not, whatever happen in SCDC, that it wouldn't interfere
11 with my --

12 Q. Dialysis?

13 A. -- dialysis or anything. She understood. She takes
14 several breaks. You look a little unsteady. We're going
15 to take a recess. I want you to eat some food.

16 She done a lot of things. Yeah. I went along with
17 it.

18 Q. And so, just from listening to you testify, you got a
19 pretty good plea deal; do you agree?

20 A. No.

21 Q. You don't agree?

22 A. I don't.

23 Q. But you were just saying that you were satisfied with
24 everything that happened that day.

25 A. Because of that 20 years, that 25- or 30-year sentence

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1 they were hanging over my head.

2 Q. And that was the maximum sentence that you could get
3 for that conviction.

4 A. That's right. And that's what my lawyer told me that
5 they was going to ask for if they went to a jury trial.

6 Q. The judge advised you that you could get up to 30
7 years; did she not?

8 A. Yeah, she told me.

9 Q. So Mr. Davis's information was accurate. He was just
10 advising you that you could get up to 30 years if you went
11 to trial and you were found guilty.

12 A. He didn't advise me. He told me they were going to
13 ask for 30 years if I took a jury trial.

14 Q. Which is the maximum sentence?

15 A. Which would be a maximum sentence; right.

16 Q. Okay. And in regards to your appeal, Mr. Davis,
17 you're claiming that you -- Mr. Little, excuse me.

18 A. Yeah.

19 Q. -- that you did not know where Mr. Davis's office was
20 or his address?

21 A. Even, even, even though I went to his office maybe
22 about three times, I don't -- I couldn't cite his
23 address. And I still had to look for it when I went to
24 Moncks Corner. I mean, I have a general idea. I could go
25 within two to four blocks of it. Okay, it ain't in this

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1 block, it's the next block. Okay, well, it's just a
2 little further because it ain't past that block. Like
3 that.

4 But I couldn't tell you the street number.

5 Q. But you did go to his office?

6 A. Yes, I did.

7 Q. Approximately three times?

8 A. Yes, I did.

9 Q. You recall the judge advising you that you must file
10 an appeal within 10 days?

11 A. Yes, she did.

12 Q. She asked you to do it in writing?

13 A. Yeah, she had asked me -- it's even in my transcript.
14 She was saying, like, be sure if you want to file an
15 appeal to send your lawyer a letter or something in
16 writing.

17 And, you know, okay, so I understood that, that if I
18 send him a letter in writing, you know. But I wasn't able
19 to do that because he didn't come back there to give me
20 his address.

21 Q. And while you're sitting there, while these 10 days
22 are clicking by, you didn't feel it was necessary to send
23 anything to the court or anybody regarding this appeal?

24 A. No, I didn't. I didn't know the law. I wasn't
25 familiar with -- I didn't go to trial. I didn't walk off

CONRAD LITTLE - REDIRECT

1 the street, go to trial and all of a sudden because I was
2 in trial, I got these big insights or this gift that all
3 of a sudden to know what to do in the law. No, I didn't
4 do that.

5 Q. But you were told you had 10 days to file an appeal?

6 A. What?

7 Q. You were told by the judge that you had 10 days to
8 file an appeal?

9 A. Yes, I was.

10 Q. Okay. Mr. Little, the reason why you pled guilty was
11 to avoid the maximum sentence of 30 years; correct?

12 A. Yes, sir.

13 MR. GOURLEY: Nothing further, Your Honor.

14 THE COURT: Anything on redirect?

15 MS. POWERS: Just a few questions, Your Honor.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MS. POWERS:

19 Q. During that plea hearing, did the judge ask you if
20 y'all were operating in -- that it -- believing it would
21 be your second strike?

22 A. Let's go over that one more time.

23 Q. During the hearing, were you operating under an
24 understanding it was your second strike?

25 A. Yes. And during the hearing I was led to believe --

CONRAD LITTLE - REDIRECT

1 this is the way I understood it. I was led to believe
2 that even though this would have been my third drug trial
3 because in Virginia I had a simple possession charge, that
4 it would be my second strike because I, I was violating a
5 probation charge.

6 So that would have counted for one strike and this
7 strike that I'm being tried for at that time would have
8 been the second strike.

9 So that's the way I thought it was explained to me but
10 I didn't -- I really wasn't familiar with it.

11 Q. And did the judge also explain to you something about
12 maybe when you got to the Department of Corrections there
13 might be a discussion of a third strike situation?

14 A. No.

15 Q. Did she ask --

16 A. I don't recall that.

17 Q. Did she ask you if you would like to talk to Mr. Davis
18 if they found out you have a third strike situation?

19 A. I don't -- is there another way you can put that?
20 Maybe I can understand what you're saying.

21 Q. Did they talk to you about what would happen -- did
22 they talk to you about the number of strikes --

23 A. Oh, if I had a third strike?

24 Q. Correct.

25 A. I think they said if I had a third strike that I would

CONRAD LITTLE - REDIRECT

1 be tried as a habitual offender and that my sentence would
2 be a life term.

3 Q. And did they talk to you about whether or not you
4 wanted, you would want to talk to Mr. Davis if this was
5 your third strike?

6 A. I don't recall that.

7 Q. Okay.

8 MS. POWERS: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 BY MS. POWERS:

11 Q. Mr. Little, can you identify this piece of paper?

12 A. This is page 23 of my transcript.

13 Q. Would you read line five?

14 A. Line five says, well, actually line four starts the
15 question. If you were to get to the South Carolina
16 Department of Corrections and they believed this was your
17 third strike, would you want -- oh, now I see how you
18 asking me that -- would you want to talk to Mr. Davis
19 about that. Of course I would.

20 Q. Can you read the next line, what your answer was?

21 A. Yes, ma'am, I would.

22 MS. POWERS: Your Honor, can I approach?

23 THE COURT: Yes, ma'am.

24 MS. POWERS: Your Honor, I'd like to move to admit into
25 evidence page 23 of the transcript.

CONRAD LITTLE - REDIRECT

1 THE COURT: I've got the copy.

2 MS. POWERS: Okay.

3 THE COURT: I've got it as part of the record.

4 MS. POWERS: Okay. Thank you.

5 THE COURT: So, no objection. I have the transcript
6 as part of the record; is that correct?

7 MR. GOURLEY: Yes, you do, Your Honor.

8 THE COURT: Okay. So the entire transcript is in the
9 record. I'll note that page and line.

10 MS. POWERS: Thank you, Your Honor.

11 Q. So Mr. Little, if you had understood the strikes
12 differently you would want to talk to Mr. Davis?

13 A. Of course. Three strikes? Yes, ma'am. I would have
14 been talking to Mr. Davis and somebody, what his name,
15 Johnny Cochran or whoever else I could have talked to.

16 Q. And then when the Court asked you if you needed to
17 talk with Mr. Davis at all, did you tell the Court that
18 you need the time to talk with him?

19 A. There was several times during the trial where I did
20 ask for a time out and we whispered things.

21 Q. Okay. And -- may I approach, Your Honor?

22 THE COURT: You may.

23 BY MS. POWERS:

24 Q. Okay. Can you identify for me what this document is?

25 A. I'm looking at page 35 of my transcript.

CONRAD LITTLE - REDIRECT

1 Q. Okay. And can you -- can -- can you start reading for
2 me at line 17?

3 A. Line 17 is a question. Do you have any more questions
4 that you feel as though you need to ask him at this time.

5 Q. Can you read the answer to that question?

6 A. Line 19. I answered, I say: Just to delay this. You
7 know like, I'm just trying to delay this. Just to delay
8 this.

9 Q. And what did you mean by that when you were talking
10 with the judge?

11 A. Okay. Well, she understood. She said, I know, I
12 know, to put this off. I understand. I understand. I
13 don't have any questions. She said all right and I said
14 oh, all right.

15 Q. So was it your understanding that you could have, that
16 you were giving up your chance to talk to Mr. Davis then
17 because you were going to talk to him later?

18 A. Yeah. I mean, he was supposed to come back and tell
19 me the information. I'm already telling him that I don't
20 like this the whole time. Man, I don't like this. Man,
21 I'm going to ask for a retrial. Man, I'm not comfortable
22 with this. I'm telling him these things.

23 MS. POWERS: May I approach?

24 THE COURT: You may.

25 MS. POWERS: Thank you.

CONRAD LITTLE - RECROSS

1 Q. So, is there a reason why you didn't tell the judge
2 directly that you were dissatisfied with what was going
3 on --

4 A. Yes, ma'am.

5 Q. -- with Mr. Davis's services?

6 A. A personal reason. It's not in that transcript.

7 Q. Yeah. Is there reason why you didn't tell the Court
8 out loud that day that you were unhappy?

9 A. Because I thought that judge was on my side more than
10 Mr. Davis. So, no, I didn't want to upset what she was
11 doing or what she was giving me, the breaks that I knew
12 for a fact due to the law that she was giving me. And the
13 way she was running that proceeding.

14 No, I didn't want to break that train of thought from
15 her. I wouldn't want to face that 30 years, you know. I
16 wasn't looking for that. You know, you didn't have it in
17 writing that they was giving me 12 years and I took the
18 plea bargain. That happened when they took the time out
19 on, after they was choosing the jury. So, yeah that judge
20 was a good friend of mine that day.

21 MS. POWERS: Okay. I have nothing further of this
22 witness, Your Honor.

23 THE COURT: Anything on recross?

24 MR. GOURLEY: Just briefly, Your Honor. May I
25 approach the witness?

STEVE C DAVIS - DIRECT

1 THE COURT: You may.

2 RECROSS-EXAMINATION

3 BY MR. GOURLEY:

4 Q. Mr. Davis, I just want you --

5 A. My name is Mr. Little.

6 Q. Mr. Little. I'm so sorry.

7 Mr. Little, if you'll read line 25 and continue on to
8 page 26?

9 A. Okay. I'm again on page 35 line?

10 Q. Twenty-five.

11 A. Okay. Line 25 of this says, it's a question: Very
12 well. Are you completely satisfied with the services.
13 And I answered, yes, ma'am.

14 And number three. All right. Have you understood my
15 questions. Yes, I did understand her questions. Is there
16 anything you want just, to ask me about that we have just
17 been over. And I told her no.

18 Q. All right. That's good, Mr. Little.

19 A. Okay.

20 Q. Thank you so much.

21 MR. GOURLEY: No further questions, Your Honor.

22 THE COURT: All right. Thank you. Mr. Little, you
23 may step down.

24 THE APPLICANT: Thank you, sir.

25 THE COURT: Thank you, sir. All right. Ms. Powers,

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1 are you prepared to call your next witness?

2 MS. POWERS: Thank you, Your Honor. I'd like to call
3 Mr. Steve Davis to the stand.

4 THE COURT: Okay.

5 THE WITNESS: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Davis.

7 STEVE C. DAVIS, having been duly sworn, was examined
8 and testified as follows:

9 THE COURT: Ms. Powers, your witness.

10 MS. POWERS: Thank you, Your Honor.

11 THE COURT: Okay.

12 DIRECT EXAMINATION

13 BY MS. POWERS:

14 Q. Mr. Davis, during the trial of Mr. Little's case, did
15 he explain to you that he was unhappy about what was going
16 on?

17 A. Well, most people are unhappy when they can't get
18 their way. So to say he's somewhat unhappy, to
19 characterize it would be accurate. Yes, I would say he
20 was somewhat unhappy.

21 Q. Did he explain he was slightly confused on what was
22 going on?

23 A. No. Mr. Little had done this before. I represented
24 Mr. Little on a distribution of cocaine approximately a
25 year before this matter. He was happy. He got probation.

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1 He understood the process.

2 This was a second opportunity I would be representing
3 Mr. Little out of Dorchester County. In fact, the fact
4 situation was very similar.

5 Q. And did you -- were you going to go and talk with him
6 after the plea hearing?

7 A. Well, we had had a tremendous amount of time talking
8 before the plea hearing. He understood fully and I
9 thought that Judge Goodstein did an honorable job of
10 expanding the understanding process.

11 No, there was no need for me to discuss nothing
12 further with Mr. Little. Mr. Little fully understood what
13 was going on.

14 And I think I heard in the colloquy he asked the
15 judge, judge asked him if was he satisfied and he said he
16 was satisfied with Mr. Davis. I may not have been his
17 friend that day but he was satisfied.

18 Q. And had you sent him any letters while he was
19 incarcerated prior to the plea hearing?

20 A. I sent him multiple letters. All came back returned.
21 Mr. Little not only did he have a great holiday with his
22 family, apparently he just disappeared for a period of
23 time. To my surprise he was in Dorchester County Jail.

24 Q. And after the trial did you make -- or the plea
25 hearing, did you make any attempt to make sure he had your

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1 address in case he wanted to --

2 A. He had my address. He had been in my office multiple
3 times. He was a multiple client. He had been to my -- I
4 had represented him before. He was fully aware of my
5 office location, address and telephone number.

6 Q. Is it something -- did you -- is it something he would
7 have known off the top of his head to your knowledge?

8 A. He should have.

9 Q. Okay. And did you all have conversations during the
10 plea at all that he wanted to appeal the case?

11 A. No, ma'am. Why would I engage in a process of
12 pleading guilty, getting a wonderful deal that he had
13 turned down for five years because he wanted to be on
14 vacation, and then the prosecutor was grateful enough to
15 give me 12 years versus 30 years.

16 I think Mr. Little understood everything quite well.
17 But, you know, unfortunately people can't dictate their
18 punishment.

19 Q. I understand that idea.

20 Just to clarify. So when y'all showed up there for
21 trial that day, had you communicated with Mr. Little that
22 you were there for a trial?

23 A. Y'all? He was already there. He came out of the
24 detention center at Saint George. I appeared. The
25 solicitor gave me some great consideration.

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1 This matter should have already been addressed but
2 Mr. Little was the problem. Mr. Little was the problem.
3 And so, when he said about showing up, I was always
4 prepared to go forward. It was Mr. Little that I couldn't
5 always put my hands on. That's the problem.

6 Q. You said he was in Saint George; correct?

7 A. Yeah, the detention center.

8 Q. So you could have gotten hold of him there?

9 A. I did go over there and see him over there in the
10 detention center.

11 Q. Prior to that day?

12 A. I don't have an independent recollection, but I would
13 imagine I would have. It was a clear-cut case. I would
14 think I have.

15 MS. POWERS: I have nothing further at this time.

16 THE COURT: Anything on cross?

17 MR. GOURLEY: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GOURLEY:

20 Q. Mr. Davis, how long have you been practicing law?

21 A. Oh my. I think sometime too long. Thirty years. I
22 can remember the bar, November the 5th, 1982. I jumped
23 and cheered that day. I thought it was the greatest day
24 of my life other than the birth of my children and my
25 marriage; yes, sir.

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1 Q. How much of that has been criminal experience?

2 A. Unfortunately too long. I was a prosecutor for 10
3 years and I've been a defense lawyer for the last 19 or 20
4 of that. So 30 years.

5 Q. And do you have experience dealing with drug charges?

6 A. I do a lot of drug cases. Sometime they call me the
7 drug lawyer, unfortunately.

8 Q. And you were retained in this case?

9 A. What I got paid, yes.

10 Q. And do you recall when you were retained?

11 A. It was -- I got a letter there. I think I gave you
12 that. Mr. William Folley was in the case. I was
13 substituted as counsel. I was there early October. I got
14 involved in the case. I had Mr. Little to come in to my
15 office. I told him he had a five-year deal. He said, I
16 don't want no five years, I'm going to have me a good
17 Christmas or Thanksgiving and that was part of the
18 process.

19 But I wrote him numerous times to come in to the
20 office to see me. He never would respond.

21 Q. So you related the five year plea offer to Mr. Little?

22 A. Yes.

23 Q. And how many times did you meet with Mr. Little prior
24 to his plea?

25 A. I have a practice in my office because I've been doing

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1 this for a while, is that I will never, never take an
2 individual to court without prior association, prior
3 conferences. I pride myself on the situation where a
4 client can really understand.

5 I'm really taken a little bit this morning for
6 Mr. Little making these allegations against me because I
7 really do my best for my clients. I really do. Might not
8 be his friend, but I do professionally, zealously
9 represent my clients.

10 Mr. Little had an opportunity in my office multiple
11 times, but Mr. Little is Mr. Little.

12 Q. Could you put a number on how many times, an
13 approximation?

14 A. I would say at a minimum at least two or three times.

15 Q. And did you discuss with Mr. Little the elements of
16 the charges against him?

17 A. I did.

18 Q. And did you --

19 A. I tell you what. Mr. Little -- let me go a little
20 further.

21 Q. Okay.

22 A. I had a discussion with Mr. Little since he was so,
23 you know, Mr. Little wanted to dictate what his penalty
24 was going to be. I researched accommodation. And,
25 because accommodation would create a lesser penalty for

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1 him. Mr. Little and I went into all these aspects.

2 Q. Okay. And you received discovery in this case?

3 A. The discovery, I went over discovery with him. Now,
4 his recollection and my recollection of the tape would be
5 somewhat different. I think the tape did work. I think,
6 in recollection, I showed the marked money.

7 This is a bust, a buy-bust situation, you know. You
8 buy it, you get busted. He had the funds in his hand. I
9 don't know if Johnny Cochran could do much better than
10 that defending this.

11 Q. Yes, sir. And how would you characterize the State's
12 evidence against Mr. Little?

13 A. It was great.

14 Q. Overwhelming?

15 A. Young prosecutor. Yeah, I won't say.

16 Q. Yes, sir. And did you discuss any possible defenses
17 with Mr. Little?

18 A. I tell you, one of the defenses that was in that case
19 was, if I had to move it I would move it to try to create
20 an accommodation sale. That would've been it. But other
21 than -- ID, he was the guy, drugs; everything else was 100
22 percent in the State's favor.

23 Q. And you discussed his constitutional rights and him
24 waiving those when he pled guilty?

25 A. I did.

STEVE C DAVIS - CROSS

1 Q. And did Mr. Little ever tell that you he didn't
2 understand something?

3 A. Mr. Little understood everything. Mr. Little was just
4 upset because he didn't get what he wanted.

5 Q. And in regards to the two strike, three-strike
6 issue --

7 A. Well, that came --

8 Q. -- can you explain that?

9 A. -- into play because we discussed that and then Judge
10 Goodstein being the great judge she is, she went and
11 expanded even further to highlight about the three
12 strikes, exchange with her about that aspect.

13 Q. As a matter of fact, Judge Goodstein advised
14 Mr. Little what would occur if he got a third offense;
15 correct?

16 A. Yeah. One aspect about the three strikes, the State
17 got to put you on notice. So we weren't confronted with
18 that at that particular point. Okay. But that was the
19 consequences of where we were headed.

20 Q. And you entered plea negotiations on behalf of
21 Mr. Little?

22 A. I sure did.

23 Q. And you had a five-year plea which he refused to take?

24 A. He didn't want -- he wanted to have a holiday with his
25 family.

STEVE C DAVIS - REDIRECT

1 Q. And then you entered into the 12 year?

2 A. Yeah, because the solicitor writes me a letter and
3 says all prior plea negotiations are off the table. And
4 they have a right to do that unfortunately, but that's the
5 system that we operate in.

6 Q. And you communicated those offers with Mr. Little?

7 A. I did.

8 Q. And you informed him of the consequences of his plea?

9 A. Yes, I did.

10 Q. And whose decision was it to plead guilty?

11 A. It was always my client's decision.

12 Q. And did you indicate to Mr. Little that you were
13 prepared to go to trial?

14 A. I was ready at that point to go to trial. I mean, it
15 wasn't -- it didn't take a rocket scientist at this point
16 for what kind of defense we were going to put up.

17 The State's case would have been sufficiently easy.

18 No question about it. I mean, unless he -- we were ready.

19 Q. All right. No further questions, Your Honor.

20 THE COURT: Anything?

21 MS. POWERS: I have just one question.

22 THE COURT: Ma'am?

23 REDIRECT-EXAMINATION

24 BY MS. POWERS:

25 Q. When were you -- when did the State give you the plea.

STEVE C DAVIS - REDIRECT

1 deal for the five years?

2 A. I got a letter that I gave to the Attorney General.

3 It's a letter dated as far back of November 2009 where the
4 prosecutor wrote me and told me, Mr. Davis, I got a five-
5 year cap for him.

6 Q. And when were you retained?

7 A. October of that same year.

8 Q. Okay. And was Mr. Loy ever involved to your
9 knowledge?

10 A. I don't remember no Mr. Loy. He's a great friend of
11 mine.

12 Q. So you were retained, you say, in October?

13 A. That's what I recall; yes, ma'am.

14 Q. And you were paid to be retained in October?

15 A. Yeah.

16 Q. Okay. Would it surprise you if my client told you he
17 didn't retain you until after court in November?

18 A. Nothing surprises me with Mr. Little, after hearing
19 his testimony this morning. Nothing would surprise me;
20 no, ma'am.

21 MS. POWERS: Nothing further of this witness.

22 THE COURT: All right.

23 MR. GOURLEY: Your Honor, just briefly?

24 THE COURT: All right.

25

STEVE C DAVIS - REDIRECT

RECROSS-EXAMINATION

BY MR. GOURLEY:

Q. Mr. Davis, is this the letter that came from your file?

A. Yeah. This is the letter dated, addressed to Steve Davis, November the 5th, 2009. Steve Christopher Davis, a plea offer for the State versus Conrad K. Little. I am writing -- I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of guilty plea. Distribution of cocaine second offense, the State will make the following sentence recommendation, negotiated five years concurrent with probation violation.

He was on probation at that time.

Q. Mr. Davis, what's the date on this letter?

A. November the 5th, 2009.

Q. And you were retained in October?

A. That's correct.

MR. GOURLEY: Your Honor, we'd move this into evidence as State's One.

THE COURT: Any objection?

MS. POWERS: No objection, Your Honor.

THE COURT: All right. State's One is in evidence without objection.

(State's Exhibit No. 1, letter dated 110509, was

STEVE C DAVIS - REDIRECT

1 marked and received into evidence.)

2 BY MR. GOURLEY:

3 Q. Mr. Davis, one more question. In regards to the
4 appeal, did Mr. Little ever ask you to file an appeal on
5 his behalf?

6 A. No, he didn't. He did not.

7 Q. Would you have filed an appeal if he asked you?

8 A. If he asked me I would have -- what I do is, I do the
9 necessary paperwork to put the Attorney General to carry
10 out the appeal. But specifically in all my clients, in my
11 contract I told them, I do not do appeals.

12 Q. But if Mr. Little asked you to do an appeal?

13 A. I would put a notice in place for the Attorney General
14 to pick it up and go forward.

15 Q. Okay. no further questions, Your Honor.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you, Judge. Nice seeing you. Can
18 I be excused, Your Honor?

19 THE COURT: Is this your last case for the day?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right.

22 THE WITNESS: Nice seeing you.

23 THE COURT: Thank you, sir.

24 MR. GOURLEY: Nothing further from the State, Your
25 Honor.

STEVE C DAVIS - REDIRECT

1 THE COURT: Okay. Ms. Powers?

2 MS. POWERS: Nothing further, Your Honor.

3 THE COURT: Ladies and gentlemen, what I'll do is I'll
4 review the transcript and the documents that have been
5 provided to me and I'll get back to y'all with my
6 decision.

7 Thank you.

8 MR. GOURLEY: Thank you, Your Honor.

9 END OF CASE: 11:19 A.M.

10 ***

11 CERTIFICATE OF REPORTER

12

13 STATE OF SOUTH CAROLINA)

14 COUNTY OF AIKEN)

15

16 I, Cheri L. Young, Registered Professional Reporter
17 and Official Court Reporter for the State of South
18 Carolina, Second Circuit-At Large, do hereby certify that
19 the foregoing proceedings were written stenographically by
20 me using computer-aided translation; further, that the
21 foregoing is a true, accurate and complete record, to the
22 best of my skill and ability, of all the proceedings had
23 and evidence introduced in the hearing of the captioned
24 case, relative to appeal, in the Court of Common Pleas for
25 Orangeburg County, on the 22nd day of May, 2013.

STEVE C DAVIS - REDIRECT

1 I do further certify that I am neither of kin,
2 counsel, nor interest to any party hereto.

3 I have hereunder set my hand this 22nd day of
4 November, 2013.

5
6 

7 Cheri L. Young, RPR
8 Official Court Reporter
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106

The State of South Carolina

OFFICE OF SOLICITOR
First Judicial Circuit



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St. Matthews, SC 29135
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November 05, 2009

Steve Davis
P.O. Box 1168
Moncks Corner, SC 29461 (843) 761-7400

RE: Plea Offer for State v. Conrad K Little

To: Steve Christopher Davis

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

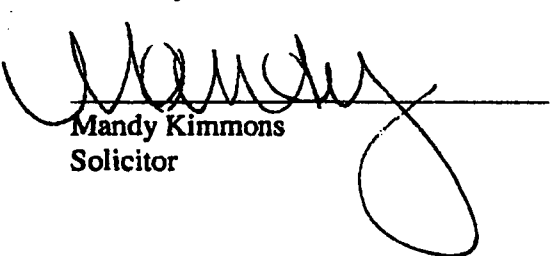
J093473 Distribution of Cocaine - 2nd offense

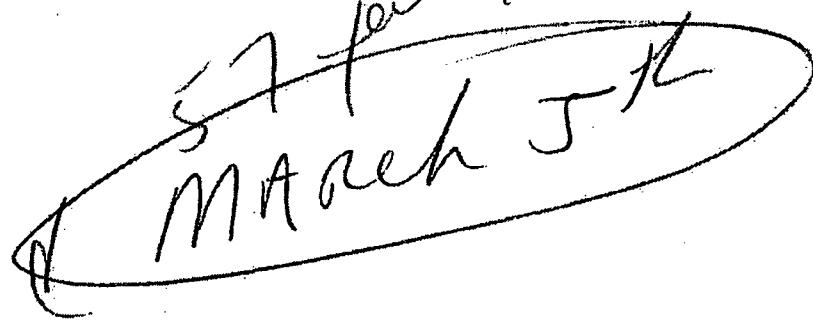
The State will make the following sentence recommendations/negotiation:

5 years concurrent w/ probation violation.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 11/19/2009 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Sincerely,


Mandy Kimmons
Solicitor

57 pers of App
March 5th

STATE'S EXHIBIT
1

STATE OF SOUTH CAROLINA CERTIFIED COPY IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT

2013 JUL 12 AM 11:32

Conrad Little., #341613

Case No. 2011-CP-18-01610

341316

Applicant,

CLERK OF COURT
DORCHESTER COUNTY

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed August 15, 2011. The Respondent made its Return on November 8, 2011. An evidentiary hearing into the matter was convened on May 22, 2013, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Natalie Powers, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the August 2009 term of the Dorchester County Grand Jury for Distribution of Cocaine (2009-GS-18-0575). Applicant pled guilty before the Honorable Diane S. Goodstein. Judge Goodstein sentenced Applicant to twelve years imprisonment pursuant to a negotiation in addition to a concurrent sentence for time revoked on his outstanding probation. Applicant did not appeal his sentence or conviction.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Attorney failed to properly prepare defense
 - b. Attorney failed with plea bargaining process
 - c. Attorney failed to file appeal.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Steve Davis, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records of the Dorchester County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel was retained to represent him for his charge and he met with Counsel twice prior to his guilty plea. Applicant testified it was his decision to plead guilty and that he was guilty of these crimes. Applicant further testified he discussed various defenses with his attorney. Applicant testified Counsel never showed him the video and photos involved in his case. Applicant testified he wanted an appeal and requested Counsel file an appeal on his behalf. Applicant testified Counsel did not explain the three strike law and the consequences of his plea. Applicant testified he requested counsel seek a continuance because he could not be present if his case went to trial. Applicant testified he would be willing to accept the original five year plea offer that he refused to take earlier.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he has practiced criminal law exclusively for thirty years. Counsel testified he was retained in this case and knew Applicant from representing him in prior proceedings. Counsel further testified he reviewed discovery with Applicant, including all photos and videos involved

in the case. Counsel testified he explained the elements of the charges and what the State was required to prove in the case. Counsel testified he specifically reviewed the consequences of Applicant's plea including the two strike, three strike law. Counsel explained to Applicant the elements for each charge he was facing. Counsel testified there was a plea offer of five years that Applicant refused and eventually Applicant chose to plead guilty to twelve years. Counsel further testified one of Applicant's requirements when pleading was he not be required to report until after the holidays. Counsel further testified he was prepared to go to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

~~In a post-conviction relief action, the Applicant has the burden of proving the allegations~~ in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to prepare a defense

This Court finds Applicant's allegation that he was denied effective assistance of trial counsel due to his failure to properly prepare a defense is without merit. This Court finds Counsel was thoroughly prepared and was ready to proceed to trial. This Court finds Counsel met with Applicant several times prior to his guilty plea. This Court finds Counsel reviewed all discovery material including all photos and video involved in Applicant's case. This Court

3
 further find Applicant has failed to produce any credible evidence that would have affected his decision to plead guilty. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). This Court holds that Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective in plea bargaining process

This Court finds Applicant's allegation that he was denied effective assistance of Trial Counsel due to his failure in the plea bargaining process is without merit. There is uncontroverted testimony that Counsel relayed all plea offers to Applicant. This Court finds Counsel relayed a five year plea offer to Applicant. Applicant chose not to accept the plea offer. This Court further finds Counsel relayed a twelve year plea offer, which Applicant accepted on the condition that he not be required to report until after the holidays. This Court holds that Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to file a direct appeal

Applicant alleges he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or

waived some or all appeal rights." Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified ^{he was} unaware of any appealable grounds and that Applicant never requested an appeal be filed. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of June, 2013.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangelony, South Carolina

WITNESSES

J Rodriguez

DUCKETT NO. 2009GS18-0575

The State of South Carolina
County of DORCHESTER

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Summerville Police Department

COURT OF GENERAL SESSIONS

August 3, 2009 TERM

ARREST WARRANT NUMBER

J093473

Arrested: February 24, 2009

THE STATE

vs.

Defendant

ACTION OF GRAND JURY

Conrad K Little

Witness:

C.C.C. PLS. AND G.S.

TRUE BILL

DATE

Foreperson of Grand Jury
Date: July 30, 2009

VERDICT

Indictment for

Distribution of Cocaine

SC Code: 44-53-370(b)

Foreperson of Petit Jury

Date:

FILED RECORDED
2009 JUL 31 AM 9:26
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

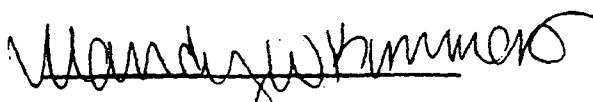
INDICTMENT
2009GS18-0575

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

DISTRIBUTION OF COCAINE

That in Dorchester County, South Carolina, on or about February 23, 2009, the
Defendant, Conrad K Little, did distribute, dispense, or deliver, a quantity of
Cocaine, a controlled substance. This offense in violation of Section 44-53-370
of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.


Mandy W. Kimmens, Solicitor